

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK



EDWARD E. BROWN,

Plaintiff,

-v-

DECISION AND ORDER  
10-CV-0497A(Sr)

UNITED STATES, DEPARTMENT OF  
VETERANS AFFAIRS, VR & E Div.,  
MRS. SUSAN FITZGIBBONS,

Defendants.

Plaintiff has requested permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) and has met the statutory requirements. Accordingly, plaintiff's request to proceed as a poor person is hereby granted. In addition, plaintiff's complaint has been reviewed by the Court with respect to the 28 U.S.C. § 1915(e)(2) criteria.<sup>1</sup>

The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Complaint, and this Order upon the named defendants without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor. Service is to be made in accordance with the applicable rules set forth in the Federal Rules of Civil Procedure.

Further, to ensure that there is no possibility of confusion with respect to service, it is hereby directed that, in addition to the U. S. Marshal service directed above, the

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<sup>1</sup> See, e.g., *Benitez v. Wolff*, 907 F.2d 1293, 1295 (2d Cir. 1990) (*per curiam*) ("*Sua sponte* dismissal of a *pro se* complaint prior to service of process is a draconian device, which is warranted only when the complaint lacks an arguable basis in law or fact. Where a colorable claim is made out, dismissal is improper prior to service of process and the defendants' answer.") (citations and internal quotations omitted)).

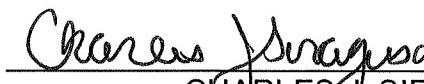
Clerk of the Court is also directed to send copies of the Summons, Complaint, and this Order by certified mail to the following, pursuant to Rule 4(i) of the Federal Rules of Civil Procedure:

- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;
- Civil Process Clerk, United States Attorney for the Western District of New York, United States Attorney's Office, USAO/WDNY, 138 Delaware Avenue, Buffalo, New York 14202; and
- United States Department of Veterans Affairs, VR & E Div., 810 Vermont Avenue, NW, Washington, DC 20420;

Mrs. Susan Fitzgibbons, Department of Veterans Affairs, VR & E Div., Buffalo Regional Office, 130 S. Elmwood Avenue, Rm. 643, Buffalo, NY 14201.

SO ORDERED.

Dated: JUNE 25, 2010  
Rochester, New York

  
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CHARLES J. SIRAGUSA  
United States District Judge